

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 6:07-CV-00511-LED
CDW CORPORATION,)	
NEWEGG INC.,)	
REDCATS USA, INC.)	
SYSTEMAX INC.,)	
ZAPPOS.COM, INC.,)	
REDCATS USA, L.P.,)	
THE SPORTSMAN'S GUIDE, INC., AND)	
TIGERDIRECT, INC.,)	
)	
Defendants.)	

JOINT CERTIFICATE OF CONFERENCE

Counsel for Plaintiff Soverain Software LLC ("Soverain") and Defendant Newegg Inc. ("Newegg") have complied with the Court's January 25, 2009 Order (Dkt. No. 315) to meet and confer on the parties' motions in limine. A meet and confer was conducted over the telephone on January 27, 2010 between counsel for Soverain (Ken Adamo, Michael Smith, and Ken Canfield) and counsel for Newegg (Richard Sayles, Kent Baldauf, and Mark Strachan). A follow-up telephone conference was held on January 28, 2010 between counsel for Soverain (Barry Satine and Ken Canfield) and counsel for Newegg (Kent Baldauf and Daniel Brean).

The parties were unable to reach agreement on the following motions in limine and seek the Court's assistance to resolve the parties' outstanding issues as to these motions:

Soverain's motions in limine nos. 1, 8, 9, 12, 13, 14, and 15
Newegg's motion in limine no. 2

The following tables provide the status of each of the parties' motions in limine. Nothing in the tables below waives either party's right to object to any evidence, statements, or arguments at trial.

Soverain's Motion in Limine	Status
1. Acquisition (Purchase price) of the Patents-in-Suit	No agreement reached; argument requested
2. Validity of the Patents-In-Suit During Soverain's Direct Case	Agreed, subject to the understanding that Soverain may introduce evidence, statements, or arguments during its direct case related to (1) facts to the effect that the '314 and '492 patents were reexamined, and that certain prior art asserted by Newegg was considered during reexamination, and (2) facts relating to the development, background, and advantages of the inventions of the patents-in-suit. This motion in limine does not apply to the opening argument of either party.
3. Inconsistent Claim Construction	Agreed
4. Unalleged Prior Art	Agreed
5. Effect of Jury's Answers	Agreed (to be applied to both parties)
6. Matters Outside Joint Pre-Trial Order	Agreed
7. Criticism of the Patent Office	Agreed, subject to the understanding that Newegg will challenge the validity of the patents-in-suit and is entitled to introduce evidence, statements, and arguments to the effect that the PTO did make mistakes in issuing those patents
8. Undisclosed Expert Testimony	No agreement reached; argument requested
9. Expert Opinions Regarding Technical Alternatives from Wu	No agreement reached; argument requested
10. Soverain's Litigation Expenses	Agreed, subject to the understanding that Newegg is entitled to introduce evidence, statements, or arguments regarding Soverain's business expenses/losses related to sources other than litigation
11. Reference to Soverain with a Pejorative Term	Agreed, subject to the understanding that Newegg is entitled to introduce evidence, statements, or arguments that Soverain's Transact product is not commercially successful
12. Reliance on Transact as a Non-Infringing Alternative	No agreement reached; argument requested
13. Reliance on E-Commerce Software Not Shown To Be Available, Non-Infringing,	No agreement reached; argument requested

or Acceptable at the Time of the Hypothetical Negotiation	
14. Reliance on Design Arouns as Non-Infringing Alternatives	No agreement reached; argument requested
15. Reliance on E-Commerce Software as Data Points	No agreement reached; argument requested
16. Reliance on Fact Witnesses not Properly Disclosed in Discovery	Withdrawn
17. Reexamination Proceedings of 7,191,447 Patent	Agreed
18. Testimony Defendants' 30(b)(6) Witnesses Were Unable To Provide	Agreed
19. Selection of the Defendant	Agreed
20. Uncorroborated Testimony Regarding Alleged Prior Art	Granted in part as to Trevor's uncorroborated testimony (Dkt. No. 315)
21. Purported Reconstructed Systems	Agreed
22. Trewitt Paper Is not Prior Art	Agreed
23. CompuServe Manuals Are Inadmissible as Hearsay	Denied (Dkt. No. 315)
24. Expert Trial Testimony by Alexander Trevor, Reliance on Trevor's Expert Report or Deposition, and the Trevor Report Itself	Seeks same relief as Soverain's Motion to Preclude Expert Trial Testimony by Alexander Trevor, Preclude Edward Tittel from Offering Testimony Based on the Trevor Report, and Exclude the Trevor Report from Evidence (Dkt. No. 242), which was denied as moot (Dkt. No. 315) given Newegg's representation that it would not offer such evidence
25. Evidence Regarding Defenses not Included in the Joint Pre-Trial Order	Agreed
26. Evidence on Issues not for the Jury	Agreed
27. Attorneys' Fee Arrangement Between Soverain and its Attorneys	Agreed
28. Printed Publications Without Evidence of Dissemination	Denied (Dkt. No. 315)
29. Soverain's Income	Agreed: Newegg agrees not to introduce evidence, statements, or arguments regarding income sources other than those related to Soverain's Transact software product.

Newegg's Motion in Limine	Status
1. Preclusion of Evidence, Statements, and Arguments Relating to Newegg's Total Sales Revenues and Profits	Withdrawn
2. Preclusion of Evidence, Statements, and Arguments Referring or Relating to	No agreement reached; argument requested

Licenses or Licensees of the Patents-in-suit, where such Licenses were Entered into in Settlement of Litigation	
3. Preclusion of Testimony by Michael Shamos which Purports to Explain Legal Principles or Provide Legal Instruction for Analyzing the Validity of the Asserted Claims	Agreed, subject to the understanding that Dr. Shamos may testify as to the legal basis for his analysis, the steps he took in his analysis, and his understanding of the law as he applied it in carrying out his analysis, and further subject to Newegg's right, if it believes it to be necessary after Dr. Shamos's testimony, to seek a curative jury instruction
4. Preclusion of Sovereign from Offering Arguments and Witness Statements Related to the Reexaminations of the '314 and '492 Patents, Wherein such Arguments or Statements Suggest that the Patents are Somehow Entitled to a Heightened or Strengthened Presumption of Validity by Virtue of having undergone Reexamination	Agreed, subject to the understanding that Sovereign may introduce evidence, statements, or arguments that the '314 and '492 patents were reexamined, and that certain prior art asserted by Newegg was considered during reexamination

Dated: January 28, 2010

Respectfully submitted,

/s/ Barry R. Satine (with permission)

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CERTIFICATE OF SERVICE

This is to certify that on January 28, 2010, a true and correct copy of the foregoing document has been served on all counsel of record via the Court's ECF system.

/s/ Barry R. Satine
Barry R. Satine
Attorney for Plaintiff